

Supreme Court, U.S.  
FILED

NO. 83 - 1547 FEB 27 1984

ALEXANDER L. STEVAS  
CLERK

**In The  
Supreme Court of the United States**

OCTOBER TERM 1983

---

GORDON NOVEL,

PETITIONER

v.

LOUISIANA EXPOSITION ET AL

RESPONDENTS

---

PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

PETITION FOR WRIT OF CERTIORARI

---

GORDON NOVEL  
Appearing Pro Se  
2840 St. Charles Avenue  
New Orleans, La. 70115  
(504) 899-0777

---

## QUESTION PRESENTED FOR REVIEW

Has petitioner been denied procedural due process of law where he relied on oral assurances that if his appeal was filed *pro se* by October 7, 1983, it would be considered on appeal by the Court of Appeals for the Fifth Circuit? The Clerk, by local custom and usage, has not dismissed late appeals except by prior warning.

LIST OF INTERESTED PARTIES

Gordon Novel—Plaintiff

Louisiana Expo. Inc.,  
Joseph Canizaro,  
Lester E. Kabacoff,  
Ewen Dingwall,  
Jim Trucksess,  
Sonnenblick-Goldman Corporation  
Houshang Ram,  
Louis Roussell, Jr.,  
Robert Waterman,

—Defendents

## TABLE OF CONTENTS

	Page
Question Presented for Review .....	i
List of Interested Parties .....	ii
Table of Contents .....	iii
Table of Authorities .....	iv
Opinions Below .....	A-3,4,5,13
Jurisdiction .....	2
Constitutional and Statutory Provisions Invoked .....	2
Statement of the Case .....	2
Reason for Granting the Writ .....	4
Conclusion .....	5
Certificate of Service .....	7,A22
Proof of Service .....	6
APPENDIX A—Order of U.S. Fifth Circuit Court of Appeals dismissing appeal pursuant to Rule 42.3.2 .....	A-1
APPENDIX B—Order of the U.S. Fifth Circuit Court of Appelas denying Petition for Rehearing and Rehearing En Banc .....	A-5
APPENDIX C—Letter from Clerk, U.S. Fifth Circuit Court of Appeals .....	A-7
APPENDIX D—Letter from Clerk, U.S. Fifth Circuit Court of Appeals .....	A-9
APPENDIX E—Letter from Clerk, U.S. Fifth Circuit Court of Appeals .....	A-11
APPENDIX F—Opinion of U.S. District Court for the Eastern District of Louisian .....	A-13
APPENDIX G—Certificate of Service of Corrected Writ of Certiorari Application .....	A-22

## TABLE OF AUTHORITIES

Statute	Page
28 U.S.C.A. Sec. 1651(a) . . . . .	2
“Due Process” clause of the United States Constitution . . . . .	2
Rules of the United States Court of Appeals for the Fifth Circuit, Local Rule 42.3. . . . .	2
Rules of the other United States Court of Appeals for all of the various Circuits, including the Local Rules. . . . .	2

I

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

---

GORDON NOVEL,

PETITIONER

V.

LOUISIANA EXPOSITION, ET AL,

RESPONDENTS

---

PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

PETITION FOR WRIT OF CERTIORARI

---

The petitioner, Gordon Novel, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on November 28, 1983.

STATEMENT OF THE CASE

The Court of Appeals ruled on October 27, 1983, that the "Motion of Appellant for Leave to File This Brief Out of Time 'is Denied'" The clerk for the United States Court of Appeals for the Fifth Circuit entered the appeal dismissed pursuant to Local Rule 42.3, and provided by order that: "the appeal was duly entered

dismissed for want of prosecution for failure of appellant to file his brief within the time fixed by the rules..." A copy of the clerk's order and a copy of the Court's order are attached as Appendix A.

The Court of Appeals denied on November 28, 1983, by per curiam opinion Petitioner's Request for Rehearing and Suggestion for Rehearing *En Banc*. A copy of this order is attached as Appendix B.

## JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1651(a), the All Writs Act.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

1. "Due Process" clause of the United States Constitution.
2. Rules of the United States Court of Appeals for the Fifth Circuit, Local Rule 42.3.
3. Rules of the other United States Court of Appeals for all of the various Circuits, including the Local Rules.

## STATEMENT OF THE CASE

This case presents for interpretation the denial of an appellant's due process rights to have an appeal heard in accordance with the Local Rules of the United States Court of Appeals, for the Fifth Circuit, and the custom and usage thereof as applied to the filing procedures for briefs.

The Trial Judge filed written reasons for judgment in this case February 9, 1983, some eighteen months after orally dismissing petitioner's original and amended complaints. Plaintiff's counsel was not in a position to continue to represent petitioner after such a long period from the time of the original order until the written reasons were filed by the Trial Judge. Petitioner immediately sought to retain other counsel to perfect his appeal. Petitioner retained Mr. Reid W. Kennedy, an attorney practicing in Marietta, Georgia, who was familiar with the case. Mr. Kennedy was not enrolled to practice before the Fifth Circuit, although he was under the impression that his original admission was still in effect when he made application for an extension of time to file appellant's brief. See Appendix C.

The clerk by letter advised that: "Ruling on your motion for an extension will be held in abeyance pending receipt of the above documents" referring to his qualification. On August 15, 1983, Mr. Kennedy was notified that he should forward for filing a motion to be substituted as counsel on behalf of the appellant, to replace the original counsel. This letter also enclosed for completion Appearance of Counsel forms and Oaths for Admission. In this letter the clerk advised that the motion for an extension to file the brief would be "held in abeyance pending receipt of the above documents." See Appendix D.

Counsel for appellant was notified by letter dated August 25, 1983, as follows: "... pursuant to Local Rule 42.3, you are hereby notified that unless the above documents are received within fifteen days from this date, this case will be dismissed by the clerk for the court." See Appendix E.



On September 9, 1983, appellant's counsel filed a "Motion for Continuance" in order to file his brief. By order of the Fifth Circuit Court this request was denied. Upon learning of this denial, counsel withdrew from the case, and appellant asked the clerk whether he could still file an appeal *pro se*, and the clerk stated that he should get his brief in as soon as possible, not later than Monday, the 7th of October. The appellant asked whether the case had been dismissed and was advised that it had not, but he should request permission to file out of time. Appellant was led to believe that the clerk would grant until October 7, 1983, within which to file his brief as he was familiar with the circumstances.

Certain of defendants filed oppositions to filing out of time which were answered by plaintiff.

The Court, as stated, dismissed the appeal pursuant to Rule 42.3.2 of the Local Rules.

### REASONS FOR GRANTING THE WRIT

This case presents an issue of whether a litigant relying on the custom and usage of the clerk of the Court of Appeals for the Fifth Circuit, in interpreting its own Local Rules should be denied an important appellant right. The Rules regarding time for perfecting appeals and particularly the filing of briefs can best be analyzed by examining the rules applicable in such cases in each of the various Circuits. It is noted that all Circuits have automatic provisions as to when briefs must be filed, and for the most part any continuance must be sought prior to the expiration date by motion to the Court. The Fifth Circuit adopted a Local Rule which apparently by custom, usage, and interpretation granted discretion on the part of the clerk. Local Rule 42.3.2 requires the

clerk to "enter an order dismissing the appeal for want of prosecution" whenever the brief has not been filed. Appellant's appeal was not dismissed.

This dismissal is not done automatically, but rather, the clerk interpreting its authority gives warning letters advising that there would be fifteen days to cure late filings. See letter to Reid W. Kennedy from the clerk dated August 25, 1983. Exhibit C. The letter was written on a date after the brief should have been filed initially. The clerk apparently orally assured appellant that the last day to file his brief after withdrawal of his counsel would be October 7, 1983, a date he was able to meet.

The court's procedure as explained above is that the clerk does not automatically dismiss appeals when time expires. The authority to do this is apparently Rule 42.3.3 which reads, "In all instances of failure to prosecute appeals... as required, the Court may take such other action as it deems appropriate." In effect the clerk can grant extension, and this is confirmed by his not dismissing the appeal in this case by entering an order required by Rule 42.3.2. Further, in this case no appellee filed an appropriate action to have the clerk enter such dismissal order pursuant to said Local Rule.

Appellant had every reason to believe that if his brief was filed on October 7, 1983, it would be considered by the court. Rule 42.3.3 is a relief provision for the court to dispense with the automatic provisions of Rule 42.3.2.

## CONCLUSION

Appellant should not be penalized because his counsel did not perfect his appeal timely. Then relying on the clerk's assur-

ance that he could file the brief if it were done promptly, he should not now be prevented from having his appeal heard. This denial of an appellant right is a denial of due process. Late filing in no way endangered appellee's position. It is respectfully submitted that the present case warrants consideration by this court or an order directing the Court of Appeals for the Fifth Circuit to consider his appeal.

Respectfully submitted,

---

Gordon Novel  
appearing pro se  
2840 St. Charles Avenue  
New Orleans, La. 70115

This application is filed pursuant to Rule 47 of the Rules of the Supreme Court permitting a party to file individually.

## PROOF OF SERVICE

STATE OF LOUISIANA

ss.:

PARISH OF ORLEANS

GORDON NOVEL, after being duly sworn, deposes and says that pursuant to Rule 28.4(a) of this Court he served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT on counsel for Respondents by enclosing a copy thereof in an envelope, first class postage prepaid, addressed to:

Mr. Rutledge C. Clement, Jr.,  
Hibernia Bank Bldg., New Orleans, La.  
Mr. Edward D. Weggman,  
222 Baronne St., New Orleans, La. 70130  
Mr. Pres Kabacoff,  
1404 ITM Bldg., New Orleans, La. 70130  
Mr. Peter J. Butler,  
American Bank Bldg., New Orleans, La.  
Mr. Philip A. Gattuso,  
56 Westbank Expy., Gretna, La.

and depositing same in the United States mails at New Orleans, Louisiana on 24 February 1984.

/s/ GORDON NOVEL

SUBSCRIBED AND SWORN TO  
BEFORE ME THIS  
24 DAY OF FEBRUARY, 1984.

/s/ Hal Hirsh

NOTARY PUBLIC IN AND FOR SAID  
PARISH AND STATE WHO CERTIFIES  
HE IS ACTING PRO SE

A-1

APPENDIX "A"

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

October 27, 1983

Mrs. Loretta G. Whyte, Clerk  
U.S. District Court  
500 Camp Street, Room C-152  
New Orleans, LA 70130

No. 83-3159—NOVEL vs. LOUISIANA EXPO, INC.

(D.C. No. CA 77-3597-L(5))

Dear Mrs. Whyte:

In light of the Court's order this day entered, the above referenced appeal is hereby dismissed pursuant to Rule 42.3.2.

Respectfully,

GILBERT F. GANUCHEAU, Clerk

By: Marybeth Breaux

/mbb  
enclosures

cc and enclosures to:  
Mr. Gordon Novel  
Mr. Rutledge C. Clement, Jr.  
Mr. Edward D. Wegmann  
Mr. Pres Kabacoff

A-2

Mr. Peter J. Butler  
Mr. Philip A. Gattuso

P.S. to Mr. Novel: Returned herewith are your unfiled  
briefs.

A-3

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 83-3159

---

GORDON NOVEL,

Plaintiff-Appellant

versus

LOUISIANA EXPO, INC.,  
JOSEPH CANIZARO and  
LESTER E. KABACOFF, ET AL.,

Defendants-Appellees

---

Appeal from the United States District Court  
for the Eastern District of Louisiana

---

ORDER:

IT IS ORDERED that the motion of appellant for  
leave to file his brief out of time is denied.

---

/s/ THOMAS S REAVLEY  
UNITED STATES CIRCUIT JUDGE

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 83-3159

---

GORDON NOVEL,

Plaintiff-Appellant

versus

LOUISIANA EXPO, INC.,  
JOSEPH CANIZARO and  
LESTER E. KABACOFF, ET AL.,

Defendants-Appellees

---

Appeal from the United States District Court  
for the Eastern District of Louisiana

---

CLERK'S OFFICE:

Pursuant to Local Rule 42.3, the appeal was duly entered dismissed for want of prosecution for failure of appellant to file his brief within the time fixed by the rules, this 27th day of October 1983.

GILBERT F. GANUCHEAU  
Clerk of the United States  
Court of Appeals for the Fifth Circuit

By: Marybeth Breaux  
Deputy Clerk

FOR THE COURT - BY DIRECTION



A-5

**APPENDIX "B"**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

No. 83-3159

---

GORDON NOVEL,

Plaintiff-Appellant

versus

LOUISIANA EXPO, INC.,  
JOSEPH CANIZARO and  
LESTER E. KABACOFF, ET AL.,

Defendants-Appellees

---

Appeal from the United States District Court  
for the Eastern District of Louisiana

---

ON PETITION FOR REHEARING AND  
SUGGESTION FOR REHEARING EN BANC  
(ORDER 10/27/83, 5 Cir., 1983, F.2d)  
(November 28, 1983)

Before REAVLEY, RANDALL and WILLIAMS, Circuit  
Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member  
of this panel nor Judge in regular active service on

the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ THOMAS REAVLEY

United States Circuit Judge

A-7

**APPENDIX "C"**

**UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
OFFICE OF THE CLERK**

August 3, 1983

Mr. Reid W. Kennedy  
Attorney at Law  
1495 Powers Ferry Road  
Marietta, GA 30067

No. 83-3159 - Gordon Novel vs  
Louisiana Expo, Inc., Et Al.

Dear Counsel:

This will acknowledge receipt of your motion for an extension of time for the filing of appellant's brief.

In order that we may enter your name on our docket as counsel of record for the appellant, it will be necessary that you forward a motion to be substituted as counsel of record. Further, you should complete the enclosed Appearance of Counsel Form, and if applicable, the application and oath for admission to practice before this Court.

Ruling on your motion for an extension will be held in abeyance pending receipt of the above documents.

Very truly yours,

**GILBERT F. GANUCHEAU, Clerk**

By: \_\_\_\_\_  
Joan Perkins  
Case Manager

A-8

JP/ml

Enclosure

cc: Mr. Gordon Novel  
Mr. Harry Diffendal  
Mr. Rutledge C. Clement, Jr.  
Mr. Edward D. Wegmann  
Mr. Pres Kabacoff  
Mr. Peter J. Butler  
Mr. Philip A. Gattuso

APPENDIX "D"

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

August 15, 1983

Mr. Reid W. Kennedy  
Attorney at Law  
1495 Powers Ferry Road  
Marietta, GA 30067

No. 83-3159 - Gordon Novel vs  
Louisiana Expo, Inc., Et Al.

Dear Counsel:

In accordance with our telephone conversation of today, this will confirm the fact that you will prepare and forward for filing a motion to be substituted as counsel of record on behalf of the appellant.

I am also enclosing another Appearance of Counsel and application and oath for admission form for completion by you.

As our letter of August 3, 1983, stated, your motion for an extension of time for filing of appellant's brief will be held in abeyance pending receipt of the above documents.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By: \_\_\_\_\_  
Joan Perkins  
Case Manager

JP/ml

Enclosure

cc: Mr. Gordon Novel  
Mr. Harry Diffendal  
Mr. Rutledge C. Clement, Jr.  
Mr. Edward D. Wegmann  
Mr. Pres Kabacoff  
Mr. Peter J. Butler  
Mr. Philip A. Gattuso

A-11

APPENDIX "E"

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

August 25, 1983

Mr. Reid W. Kennedy  
Attorney at Law  
1495 Powers Ferry Road  
Marietta, GA 30067

No. 83-3159 - Gordon Novel vs  
Louisiana Expo, Inc., Et Al.

Dear Counsel:

On August 3 and August 15, 1983, we wrote you requesting that you prepare and forward for filing a motion to be substituted as counsel of record on behalf of the appellant in the above captioned cause. To date, this motion has not been received, nor has the appearance of counsel and application and oath for admission to practice form been received as requested.

Accordingly, pursuant to Local Rule 42.3, you are hereby notified that unless the above documents are received within 15 days from this date, this case will be dismissed by the Clerk for the Court.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By: \_\_\_\_\_  
Joan Perkins  
Case Manager

JP/ml

Enclosure

cc: Mr. Gordon Novel  
Mr. Harry Diffendal  
Mr. Rutledge C. Clement, Jr.  
Mr. Edward D. Wegmann  
Mr. Pres Kabacoff  
Mr. Peter J. Butler  
Mr. Philip A. Gattuso



APPENDIX "F"

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

CIVIL ACTION  
NO. 77-3597  
SECTION L

GORDON NOVEL

VERSUS

LOUISIANA EXPO, INC., ET AL

This matter came before the Court on a former date. After considering the record, the briefs and argument of counsel and the applicable law, motions of defendants to dismiss plaintiff's original and amended complaints are granted for the following reasons, to-wit:

On April 13, 1977, in the Northern District of Georgia, plaintiff, Gordon Novel, contending he was a citizen of the United States, filed a twenty-seven (27) page complaint containing vague and conclusionary allegation that thirteen (13) defendants (ranging from Louisiana Expo, Inc., an organization formed to promote a World's Fair in Louisiana, to various federal and state law enforcement officials) conspired against him.

The alleged purpose of the massive conspiracy was to steal plaintiff's idea of having a World's Fair in New Orleans. To that end, plaintiff alleged that the defendants conspired to harass him, to ruin his reputation, to bring false criminal charges against him, and to kidnap and/or murder him.

In November of 1977, the case was transferred to the Eastern District of Louisiana on the grounds that most of the events in question occurred in Louisiana and that a majority of the defendants resided there. (Record, Vol. 1, Doc. 1).

Well over four (4) years after the filing of the original complaint, plaintiff filed an amended complaint adding two (2) new defendants and containing additional allegations.

Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action when the plaintiff fails to prosecute his action, or fails to comply with any order of the court. In *Rogers v. Kroger Co.*, 669 F.2d 317 (5th Cir. 1982), the Fifth Circuit set forth guidelines for determining when a 41(b) dismissal is warranted. According to the *Rogers* case, in order to dismiss a case, the court *must* find a clear record of delay on the part of the plaintiff, and *must* also find that to impose lesser sanctions would be futile. The *Rogers* case also set forth other factors that a district court *may* take into consideration, although the Fifth Circuit did not find them necessary for dismissal. These included a determination of whether continuance of the action would severely prejudice the defendants or endanger the judicial process itself. *Id.* at 321.

After the careful review of the long and contorted record of this case, I find that all of the factors discussed in *Rogers* are present in the case at bar. On October 2, 1978 approximately a year and a half after the case was filed, Magistrate Hughes recommended to Judge Mitchell, who was presiding over the case at that time, that the case be dismissed for failure to prosecute. (Record, Vol. 2, Doc. 9). This was the first of many warnings received by Novel to move his case to trial. On November 17,

1978, plaintiff was again admonished to proceed with his case, and an orderly manner of progression for the litigation was set out. At that time, Novel was ordered to file before February 1, 1979: a narrative written statement of the facts that would be offered to prove his claims, a list of all exhibits to be used as evidence, and a list of all witnesses who were to testify in support of the facts. Plaintiff was warned that failure to comply with the Court's order would result in dismissal. (Record, Vol. 2, Doc. 11. *See also* Record, Vol. 2, Doc. 13.)

In late 1979, the case was transferred to Section L. Because of the overly broad, vague and sweeping allegations contained in the complaint, in March of 1980, Novel was again ordered to proceed with this litigation and to file no later than May 1, 1980, a summary of the facts supporting his case and a list of witnesses and exhibits. Plaintiff was warned that deadlines would only be extended for good cause shown. (Record, Vol. 3, Doc. 45). Although, on May 1, 1980, plaintiff was granted a thirty (30) day extension (Record, Vol. 3, Doc. 46), he never complied with the order of the Court.

On October 24, 1980, plaintiff served upon the defendants a set of forty-eight (48) requests for production so broad that they could only have been propounded for the purpose of oppression and harassing the defendants. (Record, Vol. 3, Docs. 57 & 58). These were justifiably met with fierce opposition and ultimately denied. (Record, Vol. 4, Doc. 75). Plaintiff again propounded requests for production which were still vague and overly broad, albeit less lengthy. (Record, Vol. 4, Docs. 80-83), dismissed as moot, July 9, 1981, (Record, Vol. 56, Doc. 122). Ironically, these were met with a set of interrogatories propounded by one of the defendants requesting plain-

tiff to provide a summary of the facts supporting his claims, and a list of witnesses and exhibits, (Record, Vol. 4, Doc. 84).

Finally, well over four (4) years after the initial complaint was filed and in order to prolong this litigation and prevent this Court from granting defendants motions to dismiss this action, Novel filed on July 7, 1981 an amended complaint containing additional allegations and naming two (2) new defendants. Although Novel knew of the pending motions, he filed this amended complaint on the day before the motions to dismiss were set for final argument.

After reviewing the record, I find plaintiff primarily, if not entirely, to blame for the fact that this case has remained at a standstill for well over four (4) years. Plaintiff had ample opportunity to clarify the issues, yet he repeatedly refused to do so. In light of plaintiff's long history of contumacious behavior, I find that it would be fruitless to impose any sanction other than dismissal. *Rogers v. Kroger Co.*, 669 F.2d 317 (5th Cir. 1982); *Martin-Trigona v. Morris*, 627 F.2d 680 (5th Cir. 1980); *Ramsey v. Bailey*, 531 F.2d 706 (5th Cir. 1976). See also *Link v. Wabash RR Co.*, 82 S.Ct. 1386 (1962); *Lyell Theatre v. Loews Corp.*, 682 F.2d 37 (2d Cir. 1982); *Merker v. Rice*, 649 F.2d 171 (2d Cir. 1981); *Chira v. Lockheed Aircraft Corp.*, 634 F.2d 664 (2d cir. 1980); 9 Wright & Miller, *Federal Practice and Procedure* §§2369-70.

Moreover, a district court has the power to dismiss a cause *sua sponte*, if it is frivolous and brought for some ulterior purpose such as harassment. *Brown v. District Unemployment Comp. Bd.*, 411 F. Supp. 1001 (D.C.D.C., 1975). See also 5 Wright & Miller, *Federal Practice and Procedure* §1334; Rule 11 of the Federal Rules of Civil Procedure; 28 U.S.C. §1915 (d).

It is apparent from the complaint and other pleadings filed by plaintiff, and the history of the case, that Novel's sole purpose was to harass the various defendants and gain public notoriety.<sup>1</sup>

In his original complaint, plaintiff attempts, by broad and unsubstantiated allegations, to tie into the alleged conspiracy (or conspiracies) against him, historical events, and events of national and local politics such as the Kennedy assassination,<sup>2</sup> the Watergate affair,<sup>3</sup> the CIA,<sup>4</sup> organized crime,<sup>5</sup> local political alliances<sup>6</sup> and the bankruptcy of a New Orleans Bank.<sup>7</sup> The complaint also makes speculative and totally unsubstantiated allegations about the defendants' financial affairs, i.e., that the fair market value of defendant Ewen Dingwall's feasibility study was made at a cost of \$35,000 rather than the \$70,000 fee paid to him, the surplus being a bribe;<sup>8</sup>

---

<sup>1</sup> See e.g., plaintiff's letter to Judge Mitchell, filed March 1, 1979 (Record, Vol. 2, Doc. 19) wherein plaintiff promises that "I am absolutely certain you will find (his case) to be the most informative, interesting, intellectually challenging, and entertaining case that has ever come before your court."

<sup>2</sup> Complaint, at 6.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 18 & 19.

<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.* at 10. (Plaintiff alleges that his arrest caused the bankruptcy of a New Orleans bank).

<sup>8</sup> *Id.* at 12. Defendant Dingwell has filed into the record a copy of his feasibility study and an itemized statement of his expenses. Response of defendant Dingwell, filed June 24, 1980, Record, Vol. 3, Doc. 47.

that Joseph Canizaro's Canal Place project was financially unstable;<sup>9</sup> and that the value of the defendants' land would increase in excess of fifty (50) million dollars if a World's Fair was held in Downtown New Orleans.<sup>10</sup>

During the course of this litigation, Novel has filed into the record various documents<sup>11</sup> filled with wild, sensational and fantastic allegations of intrigue worthy of a James Bond thriller, involving *inter alia*, exotic inventions, such as an anti-gravity machine,<sup>12</sup> and "Electro-Magnetic Square Wave Field Screen",<sup>13</sup> and political figures such as former President Johnson,<sup>14</sup> and the Shah of Iran.<sup>15</sup>

These pleadings filed by plaintiff contain disturbing internal inconsistencies. For example, in both his original and amended complaint, plaintiff avers that he is a resident of Georgia, yet other pleadings filed by plaintiff lead to the conclusion

---

<sup>9</sup>Complaint at 13-18.

<sup>10</sup>*Id.* at 10.

<sup>11</sup>See Memo in Opposition to Dismiss, filed February 16, 1979 (Record, Vol. 2, Doc. 17); Letter to Judge Lansing Mitchell, filed March 1, 1979 (Record, Vol. 2, Doc. 19); Motion for Continuance and Temporary Restraining Order, filed March 29, 1979, (Record, Vol. 2, Doc. 26); Memo in Opposition to Motion to Dismiss, filed April 10, 1979 (Record, Vol. 3, Doc. 33); Order to Show Cause and Temporary Restraining Order, filed April 19, 1979 (Record, Vol. 3, Doc. 34).

<sup>12</sup>See Motion for Continuance and Temporary Restraining Order, filed March 29, 1979 (Record, Vol. 2, Doc. 26 at pp. 15-17).

<sup>13</sup>*Id.* at pp. 34-35.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.* at 20-22.

that at all times pertinent to this litigation, plaintiff was a resident of Louisiana.<sup>16</sup> (See Motion for Continuance and Temporary Restraining Order, filed March 29, 1979, Record, Vol. 2, Doc. 26, at pp. 9-11 in which plaintiff alleges that he left his residence in New Orleans solely for the purpose of testifying in Washington regarding the Kennedy assassination and was hospitalized in Georgia enroute to Louisiana.) Accord plaintiff's Memor in Opposition to Motion to Dismiss, filed February 16, 1979 (Record, Vol. 2, Doc. 17, at pp. 10-11).

In his amended complaint, plaintiff continues to indulge in making conclusory and unwarranted allegations. Plaintiff alleges as fact that his version of a New Orleans World's Fair would be more cost effective than that of defendants' and unlike the defendants' Fair, his would enhance the Louisiana tax base;<sup>17</sup> that under his plan, 10,000 acres of land would be granted to the state upon the fair's termination,<sup>18</sup> while defendants are using the Fair as "a front to promote their own interests" at the expense of the City, the State, the Nation, and himself.<sup>19</sup> These vague and conclusory allegations, absent a nexus with supporting material facts, cannot survive a motion to dismiss. *Sparks v. Duval County Ranch Co., Inc.*, 604 F.2d 976, 978 (5th Cir. 1979); *Ostrer v. Aronwald*, 567 F.2d 551 (2d Cir. 1977); *Slotnik v. Stavisky*, 560 F.2d 31 (1st Cir. 1977); *Zentgraf v. Texas A&M University*, 492 F. Supp. 265, 272 (S.D. Tex. 1980).

---

<sup>16</sup>Plaintiff alleged diversity jurisdiction. The majority of the defendants are citizens of Louisiana.

<sup>17</sup>Amended complaint at 2.

<sup>18</sup>Amended complaint at 3.

<sup>19</sup>Amended complaint at 5.

Furthermore, many of the claims in plaintiff's amended complaint are couched in such broad and vague terms that it fails to put the defendants on notice as to the nature of the claims against them, a requirement of Rule 8 of the Federal Rules of Civil Procedure. For example, Count II of the amended complaint alleges that there was an agreement between plaintiff and defendant Louis J. Roussel to convey a plaintiff a parcel of land to be used as a site for the World's Fair. Yet plaintiff fails to specify whether the agreement was written or verbal, the time the agreement was made, what parcel of land was to be sold, or any of the terms of the alleged agreement. Throughout, the amended complaint fails to specify time and place. These facts are especially crucial to the newly-added defendants, since the allegations against them would not relate back to the filing date of the original complaint (Rule 15(c) FRCP) and in all likelihood would be time-barred.

In evaluating the nature of plaintiff's claims, I have been mindful of the fact that plaintiff was incarcerated for a period of time, and has, on occasion appeared *pro se*. *Montana v. Commissioners' Court*, 659 F.2d 19 (5th Cir. 1981); *Woodall v. Foti*, 648 F.2d 268 (5th Cir. 1981); *Green v. Montezuma*, 650 F.2d 648 (5th Cir. 1981); *Taylor v. Gibson*, 529 F.2d 709 (5th Cir. 1976). However, these considerations must be balanced with the ever-increasing danger of prejudice to the defendants. Moreover, it is obvious that plaintiff is not the average, unsophisticated *pro se* plaintiff, and he has had the benefit of several attorneys during the course of this litigation.

Most disturbing is the fact that during the entire history of this litigation, Novel has used this record as a sounding board, and as a means to make wild, vague and conclusionary



accusations against the defendants. Yet, despite his promises to the contrary and even in the face of numerous warnings by this court that his failure to do so would result in dismissal, he never clarified the nature of his claims, the jurisdictional basis of his allegations or produced a scintilla of evidence which might give credence to his contentions.<sup>20</sup>

Plaintiff is not entitled to file a totally spurious complaint and to use the discovery process in an attempt to develop viable claims. *See Jones v. Ault*, 67 F.R.D. 124, 127 (S.D. Ga. 1974). To allow him to do so would destroy the integrity of the judicial process. *See Rogers v. Kroger, Co.*, 669 F.2d 317 (5th Cir. 1982).

Accordingly, I find plaintiff's original and amended complaints to be frivolous, and totally without merit.

Accordingly, let judgment be entered in favor of defendants and against plaintiff, dismissing his original and amended complaints.

New Orleans, Louisiana, this 9th day of February, 1983.

/s/ VERONICA D. WICKER

UNITED STATES DISTRICT JUDGE

---

<sup>20</sup>During the course of this litigation, plaintiff has repeatedly alluded to the existence of voluminous amounts of evidence which would substantiate his claims. (See Memo in Opposition of Motion to Dismiss, filed February 16, 1979, Record, Vol. 2, Doc. 17, at p. 13; Letter to Reid Kennedy (one of the plaintiff's attorneys) dated March 7, 1979, attached to Letter to Lansing Mitchell, filed March 6, 1979, Record, Vol. 2, Doc. 21). On May 1, 1980, in response to my order of March 28, 1980, (Record, Doc. 45) plaintiff moved for and was granted a thirty (30) day extension on the grounds that certain tapes which he intended to use as evidence in his civil action were still being used at his criminal trial. Even after his release from prison and the conclusion of criminal proceedings, plaintiff failed to produce any evidence.

APPENDIX "G"

PROOF OF SERVICE

STATE OF LOUISIANA

SS.:

PARISH OF JEFFERSON

GORDON NOVEL, after being duly sworn, deposes and says that pursuant to Rule 28.4(a) of this Court he served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT on counsel for Respondents by enclosing a copy thereof in an envelope, first class postage prepaid, addressed to:

Mr. Rutledge C. Clement, Jr., Hibernia Bank  
Bldg., New Orleans.

Mr. Edward D. Weggman, 225 Baronne St. New  
Orleans, La. 70130

Mr. Pres Kabacoff, 1404 ITM Bldg., New  
Orleans, La. 70130

Mr. Peter J. Butler, American Bank Bldg., New  
Orleans, La.

Mr. Philip A. Gattuso, 56 Westbank Expy.,  
Gretna, La.

and depositing same in the United States mails at New Orleans,  
Louisiana on 15 March 1984.

/s/ GORDON NOVEL

A-23

SUBSCRIBED AND SWORN TO  
BEFORE ME THIS 13  
DAY OF MARCH, 1984.

SIGNED \_\_\_\_\_

NOTARY PUBLIC IN AND FOR SAID  
PARISH AND STATE WHO CERTIFIES  
HE IS ACTING PRO SE  
PARISH OF JEFFERSON

(Seal)